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Subject:—Opinions under the City of Bombay Municipal Act 1888

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C O N T E N T S.

Legal Department File No. 6. Munic. Bday City/1949.

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SMK/B.6.

Office of the R.L.A.

The City of Bombay Municipal Act, 1888. Sections 55(1) and 56(1).

The first question raised for the consideration of R.L.A. is whether more than one Deputy Municipal Commissioner can be appointed under section 55(1) of the City of Bombay Municipal Act, 1888.

2. "Deputy Commissioner" as defined in section 3(s) of the City of Bombay Municipal Act, 1888, means a Deputy Municipal Commissioner appointed under section 55, the Deputy Municipal Commissioner (Improvements) appointed under section 56-A and includes an acting Deputy Commissioner appointed under sub-section (3) of section 59. Section 55(1) provides that subject to confirmation by the Provincial Government, the Corporation may at any time from time to time appoint a person to be a Deputy Municipal Commissioner if it shall appear to it expedient so to do. Under sub-section (2) every person so appointed shall be subject to the same liabilities, restrictions and conditions to which the Commissioner is subject. Section 56(1) provides that a Deputy Commissioner so appointed shall be subordinate to the Commissioner and subject to his orders shall exercise such of the powers and perform such other duties of the Commissioner as the Commissioner shall from time to time depute to him. Under section 56A(1) the appointment of a Deputy Municipal Commissioner to be styled as Deputy Municipal Commissioner (Improvements) shall be in addition to any appointment of a Deputy Municipal Commissioner made under sub-section (1) of section 55. It is no doubt true that the article "a" has sometime the force of "one"; but that would depend upon the special context in which it is placed. There is nothing in the content of the provisions quoted above which demands that the article (underlined) which occurs there in should be given the meaning of "one". Section 13B of the General Clause Act, 1904, provides that in all Bombay Acts unless there is anything repugnant in the subject or context, the words in the singular shall ...

shall include the plural and vice versa. It would, therefore be necessary to consider whether it would be repugnant in the subject or context to construe the expression "Deputy Municipal Commissioner" in the singular in section 55(1) of the City of Bombay Municipal Act to include the plural. Under section 56(1) a Deputy Municipal Commissioner so appointed is merely a delegate of the Commissioner in as much as he exercises such powers and performs such duties as have been delegated or assigned to him by the Municipal Commissioner. In other words, no independent statutory powers are conferred upon a Deputy Municipal Commissioner. Consequently it appears that there would be nothing repugnant in the subject or content if section 55(1) is construed as empowering the Corporation to appoint more than one Deputy Municipal Commissioners for , on appointment of such Deputy Municipal Commissioners it would be open to the Municipal Commissioner to assign separately to each of them powers and duties to be exercised and performed by them. This inference is further reinforced by the words "from time to time" in section 55(1) and the words "any appointment" in section 56A(1), which contemplate an appointment of more than one Deputy Municipal Commissioner. It would, therefore, be competent to the Corporation to appoint more than one Deputy Municipal Commissioner if it be considered expedient so to do.

3. The second question raised for M.L.A's consideration is whether Government can come in the way of the Corporation if it wanted to give the additional Deputy Municipal Commissioner a salary of Rs. 1350/-. Section 56 of the City of Bombay Municipal Act provides that a Deputy Municipal Commissioner shall receive such monthly salary not exceeding Rs. 1500/- and not less than Rs. 1200/- as the Corporation shall from time to time determine. It would, therefore, be open to the Corporation to give the Additional Deputy Municipal Commissioner any higher initial pay in the scale of ~~that~~ Rs. 1200/- to Rs. 1500/-. If, however, Government considers that the intitial pay of Rs. 1350/-

Rs. 1950/- proposed by the Municipality is unreasonably high, it can withhold its sanction under section 55(1) to his appointment so as to bring pressure on the Corporation to reduce the initial salary.

P.M.LAD.
5/5

Secretariat of Legal Affairs.

U.O. to H. & L.G.Deptt. No. 277-Confl., dated the 6th May 1949.

SMT/7.6.

Office of the R.L.A.

The City of Bombay Municipal Act, 1888.

Sections 192 and 195.

The question raised for R.L.A's consideration is whether it would be legally feasible to amend sections 192 and 195 of the City of Bombay Municipal Act, 1888, providing for the levy of a non-refundable town duty by substantially reducing the present rates on tea and dates.

2. Under section 139, one of the taxes which the Municipality is entitled to levy is town duty. Section 192 empowers the municipality to prescribe the rates of town duty and the articles on which it can be levied. Section 194A exempts from town duty articles imported for immediate exportation. Under section 195(1) "when any article upon which town duty has been paid shall be exported from the city, the full amount of duty so paid shall, subject to the provisions hereinafter contained, be refunded." Section 192(1) provides for the levy of town duty on the articles specified in Schedule H when they are imported from any place into the City, and it is not qualified by the words "for use, consumption or sale." Although these words "use, consumption or sale" are not to be found in section 192, the effect of entry 49 in Provincial Legislative List II in Schedule 7 to the Government of India Act, 1935, now restricts the power of the Bombay Municipality to levy town duty on articles imported for use, consumption or sale; for, the Municipality cannot impose a tax which the Provincial Government has no power to impose. It is true that under section 143 of the Government of India Act, the power of any local authority to continue to levy any taxes which it was lawfully levying on 'April 1937, is presumed though such levy may not be warranted by the provisions of the said Act. But the effect of the proposed amendment of sections 192 and 195 would be levy town duty on the import of tea and dates and not on tea and dates imported for use, sale or consumption. Consequently, the amendment of sections 192 and 195 levying a non refundable town duty on tea and

tee and dates would ~~henceforth~~ be ultra vir-es. The proposal made by the Municipal Commissioner would not, therefore, be legally feasible.

P.M.LAL.
4/7.

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D., No. 7427, dated the 5th July 1949.

SNT/7.6.

Office of the R.L.A.

The City of Bombay Municipal Act, 1888 Sec. 181 (1) (e)

Section 181(1) (e) of the City of Bombay Municipal Act, 1888, provides that the wheel tax shall not be levied in respect of vehicles and animals vesting in His Majestry for the purposes of the Central Government while clause (e-1) exempts from that tax vehicles and animals other than those specified in clause (e) vesting in His Majesty and used solely for public purposes and not used or intended to be used for purposes of profit. It is true that under sections 174 and 175 of the Government of India Act, 1935, properties vesting in His Majesty are limited to two classes: (1) those vesting in His Majesty as for purposes of the Government of the Dominion and (2) those for the purposes of the Provinces. If clauses (e) and (e-1) of section 181 (1) of the City of Bombay Municipal Act, 1888, were to be limited to these two kinds of properties, viz., those vesting in His Majesty for the Central Government and those for the Provincial Government, the wording of this clause would have been quite diferent and clause (e-1) would not have been so wide as to include even properties other than those vesting in the Provincial Government. It appears, therefore, that clause (e-1) contemplates all properties vesting for the purposes of the Central Government. For it appears that the provisions of sections 174 and175 of the Government of India Act are not exhaustive and there are certain properties vesting in His Majesty for purposes other than those for the Central or the Provincial Government. At any rate, clause (e-1) of sub-section (1) of section 181 of the City of Bombay Municipal Act s very wide and covers even properties other than those vesting in His Majesty for the Provincial Government, Consequently, until the new Constitution Act comes into force and clause (e-1) of section 181(1) of the City of Bombay Municipal Act is adapted and it will have to be adapted after..

the .....

after the new Act comes into force it appears that the motor vehicles belonging to the High Commissioner for the United Kingdom, which vest in His Majesty and are not used or intended to be used for purposes of profit, would be exempt from the wheel tax.

P.M.LAD.
21/7.

Advocate of Legal Affairs.

U.R. to P. & S.D. 8490, dated the 27th July 1949.

sm/7.6.

Office of the B.L.A.

Sec. 80B(3) of the City of Bombay Municipal Act, 1888.

The question for B.L.A's consideration is whether under section 80B(3) of the City of Bombay Municipal Act, 1888, it is permissible for Government to sanction the rules prescribing qualifications with retrospective effect from 1-4-1946.

Sub-Section (1) of Section 80B of the City of Bombay Municipal Act, 1888, provides that save in the case of acting appointments made under section 85, and in the case of temporary appointments made under section 85A, 85B no person shall be appointed to any of the posts the power of appointment to which vests in the Corporation, unless he possesses the qualifications specified in the rules made in this behalf under sub-section (3). Sub-section (3) provides that subject to the provisions of this Act, the Corporation shall, with the previous sanction of the Provincial Government make rules for the purposes of this section. The Provincial Government may, when sanctioning such rules, make such modifications or additions as it deems fit. In the absence of express language, the delegate authority cannot claim to frame subordinate legislation with retrospective effect. Whatever has not been expressly delegated must be deemed to have been denied to it. ~~Emphasis~~ In the case of Stewart V. Brojendra Kishore Ray Chaudhory (2 F.L.J.112) it was held that unless the parent Act itself clearly authorises the issue of a notification with retrospective effect, it must be presumed that such a notification is forbidden, Consequently, in the absence of any express provision in Section 80B (3) of the City of Bombay Municipal Act, it will not be legally permissible for Government to give sanction to the rules prescribing qualifications with retrospective effect. w-

Even otherwise, no sanction can be given for appointment to or a post with retrospective effect. From ~~the~~ the provisions of sections 79 and 80 read together, it would appear that no permanent officer whose

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whose emolument exceeds Rs. 200 can be entertained unless his office and the emoluments attached thereto are in the first instance set forth in the Schedule at the time in force prepared by the Commissioner and sanctioned by the Corporation. These provisions imply that an officer can be appointed prospectively after complying with the statutory requirements. Consequently what the Corporation itself is not competent to do directly cannot be achieved indirectly through the medium of Government sanction.

P.M.LAD.
10/8
Remembrancer of Legal Affairs.

U.R. to H. & L.G.D.No. 9046, dated 11th August 1949.

SMT/7.6.

Office of the R.L.A.

Court Fees Act, 1870. Section 6, 19. and 35. Schedules I and II.

City of Bombay Municipal Act, 1888. Sections 194 and 195.

Rules inrespect f the Payment of the Refund of Town Duties. Rule 18(a).

The question raised for R.L.A's consideration is whether an application for refund of town duty paid in respect of imports of food-grains by the Central Government is required to be stamped with a court fee stamp.

Section 194, sub-section (2) of the City of Bombay Municipal Act, 1888, provides for refund in of town duty on production of a certificate signed by the officer empowered by Government concerned in this behalf certifying that the article so imported has become the property of the Crown. This provision does not contemplate any application for refund of town duty whatsoever and all that is necessary under this provision, is that a certificate should be issued by the officer empowered by Government to entitle a refund of the town duty. It is true that rule 18(a) of the Rules framed by the Bombay Corporation in respect of the payment of the refund of town duties provides for an application for refund in form B annexed thereto duly filled up and stamped with a court fee stamp of two annas and signed by the exporter, but this is one of the rules framed under section 195 for refund of town duty on export. These rules will not apply to refund of town duty on article which become the property of the Crown after importation under section 194, sub-section (2). Consequently, rule 18, sub-rule (a) will have no application in the present case. Besides, the provision for the stamping of an application with a court fee stamp of two annas in rule 18, sub-rule (a) does not appear to be valid, for under section 6 of the Court Fees Act, 1870, which is the charging provision, documents falling under the second schedule to the Act would be liable to court fees and an application for refund of town duty on exportation under rule 18 does not fall under either of the two schedules. The view taken by the Solicitor to the Government of India that unless the application for refund of town duty is exempted under section 19 or the duties are remitted by a notification under section 35 of the Court Fees Act, the application for refund of duty would be liable to the

liable to the court fees as provided in rule 15, sub-rule (a) of the rules framed by the Bombay Municipality, is not correct; for the question whether an application is exempted under section 19 or the duties are remitted under section 35 will arise only ~~ex~~ if the application falls under the second schedule (which relates to applications) as provided in section 6. As stated above the application does not fall under the second schedule. Consequently the application would not be liable to court fees.

P.M.LAD.
26/10.

Remembrancer of Legal Affairs.

SNT/7.6.